In their Lordship's view there was in the present case no technical bar which prevented the plaintiff from succeeding in her claim.

Their Lordships will report to the Head of Malaysia their opinion that the appeal should be dismissed and that the appellant should pay the respondent's costs.

Appeal dismissed.

Solicitors: *Speechly, Mumford & Soames; Park Nelson & Dennes & Co.*

HOCK YEW CO. v. FRASER & NEAVE (M) LTD. & ORS.

[O.C.J. (Gill J.) July 15, 1965]

[K.L. — Civil Suit No. 82 of 1965]

Landlord and Tenant — Agreement — Whether created a tenancy or licence — Breach of contract — Whether injunction can be given to restrain breach or threatened breach.

Practice and Procedure — Injunction — Granting of.

The plaintiffs applied for an injunction to restrain the defendants from locking the gates leading to certain premises occupied by them and further to restrain the defendants from requiring the plaintiffs to vacate from the premises and demolishing the premises. The defendants counterclaimed for an order that the plaintiffs do vacate the premises. The first defendants were the owners of the premises and they had granted a licence to the second defendants to occupy the premises for a monthly fee one of the terms of the agreement being that the said licence could be terminated by one month's notice in writing by either party. The second defendants in turn by an agreement allowed the plaintiffs to use the front portion of the premises as a store. One of the clauses in the agreement provided that the godown was occupied on a month to month basis and that the agreement may be terminated by one month's notice on either side. On September 9, 1964, the first defendants sent a written notice to the second defendants requiring them to vacate the premises by September 30, 1964. The second defendants thereupon wrote to the plaintiffs and asked them to vacate the premises by September 30, 1964. As the plaintiffs did not comply with this notice the second defendants closed the gates leading to the premises. The plaintiffs thereupon instituted legal proceedings against the defendants.

Held: (1) on the facts of this case the agreement did not create the relationship of landlord and tenant between the first defendants and the second defendants but only that of licensor and licensee and therefore the relationship between the second defendants and the plaintiffs was that of sub-licensor and sub-licensee;

(2) the licence between the parties being a contractual licence, its revocation contrary to the provisions of the contract was a breach of contract;

(3) no court would grant an injunction in the case of a contract for the creation of a licence which is not coupled with an interest in land even if the licence is for valuable consideration and therefore the plaintiffs are not entitled to an injunction in this case;

(4) in the circumstances an order could be made for the plaintiffs to vacate the premises on or before August 31, 1965.

Cases referred to:—

(1) *Sherwood (Baron)* v. *Moody & Ors.* [1952] 1 All E.R. 389.

(2) *Addiscombe Garden Estates Ltd. & Anor.* v. *Crabbe & Ors.* [1957] 3 All E.R. 563, 571.

(3) *Wilson* v. *Tavener* [1901] 1 Ch. 578.

CIVIL SUIT.

Mah King Hock for the plaintiffs.

S. E. Teh for the first defendants.

K. A. Menon for the second defendants.

Cur. Adv. Vult.

Gill J.: This is an action for an injunction to restrain the first and the second defendants, their servants or agents from locking the gates leading to the premises at No. 113, Campbell Road, Kuala Lumpur (hereinafter referred to as "the premises") and further to restrain them from requiring the plaintiffs to vacate from the premises and from demolishing the premises. There is also a claim for damages against the second defendants. The defendants counterclaim for an order that the plaintiffs do vacate from the portion of the premises now occupied by them and also ask for damages.

The first defendants are the owners of the premises which is a prefabricated steel frame building standing on a portion of a piece of land comprised in Selangor Certificate of Title No. 1992 for Lot No. 308, section 41 in the Town and District of Kuala Lumpur, of which they are the registered proprietors.

By an agreement dated the 1st day of February, 1963, the first defendants granted a licence to the second defendants to occupy the premises for a monthly fee of $3,000, one of the terms of the agreement being that the said licence could be terminated by one month's notice in writing by either party.

The second defendants in turn by an agreement dated the 15th day of June, 1963 allowed the plaintiff firm to use the front portion of the premises as storage space for a monthly rental of 15 cents per square foot payable in advance on the 15th day of each calendar month. One of the clauses in the agreement provided that the godown was occupied on a month to month basis and that the agreement may be terminated by one month's notice by either side. A further clause in the agreement stipulated that time was the essence of the contract and that the storer (the plaintiff firm) authorised the company (the second defendants) to remove all the storer's goods remaining on the premises at the expiry of 30 days' notice to be given in writing, delivered to their registered office, under registered post and further to pay to the company all costs incurred by their failure to remove their goods by the due date.

On 9th September, 1964 the first defendants sent a written notice requiring the second defendants to vacate the premises by the 30th of September, 1964, as the sale of their Campbell

Road property had reached the stage where they required the premises to be vacated as soon as possible. On 10th September, 1964 the second defendants wrote back to say that they had noted that the first defendants required possession of the premises on 30.9.64 and added that they would comply with that request. On the same day the second defendants wrote the following letter to the plaintiffs:—

"We regret to advise that we today received the following notice from Messrs. Fraser & Neave (M) Ltd. to vacate their premises at 113, Jalan Campbell, Kuala Lumpur:

'The sale of our Campbell Road property has reached a position where we require you to vacate the premises as soon as possible. It is suggested, therefore, that you vacate these premises by the 30th September, 1964.'

As we notified you a few months ago, M/s Fraser & Neave (M) Ltd. were closely negotiating for the sale of their property and under the terms of our agreement we have to give them vacant possession, on completion of sale.

As soon as the sales agreement is signed we will immediately approach the new owners and try and extend our tenancy, until they commence building, but in the meantime we herewith give you notice that we will require the removal of your goods and fittings etc., not later than 12/10/64.

Will you please acknowledge this notice."

This letter to the plaintiffs was written by the managing director of the second defendants at Singapore and sent to their branch manager at Kuala Lumpur, who in turn delivered it to the plaintiffs on 14th September, 1964.

The plaintiffs did not reply to the second defendants' letter of 10th September, 1964. On 11th December, 1964 the second defendants wrote to the plaintiffs that, unless the premises were vacated by Monday the 14th of December, 1964, they would lock all gates and forcibly remove the plaintiffs' merchandise from the premises as stipulated in the contract. On 16th December, 1964 the plaintiffs' solicitors wrote to the second defendants that as the premises were subject to the Control of Rent Ordinance, 1956, their clients were in no position to comply with their requests contained in their letter of 10th September, 1964 and subsequent letters. They added that, if all the gates were unlawfully locked and their clients' merchandise forcibly removed, they would file a writ in the High Court to recover damages for the second defendants' illegal actions.

On 4th January, 1965 the second defendants gave written notice to the plaintiffs that from 6th January, 1965 the gates to the premises would be locked but that the gates would be unlocked to allow the removal of their property. The plaintiffs' solicitors wrote back on the same day to reiterate that, if the gates were closed, legal proceedings would be instituted against the defendants immediately. On 18th January, 1965 the second defendants wrote yet another letter to the plaintiffs in the following terms:—

"It is deeply regretted that our formal Notices demanding your evacuation of the premises at 113, Jalan Campbell, Kuala Lumpur have been deliberately ignored by your company.

Such action by your company is in complete disregard of the 'Agreement' entered into by both your goodselves and British & Eastern (M) Ltd.

We now wish to advise 'Demolition' of the godown you are illegally occupying, will commence at 0900 hrs., 22nd January, 1965. It is to be hoped therefore, you will have evacuated the premises of all your goods by that time and date, as no responsibility will be entertained by British & Eastern (M) Ltd. for any damages caused through demolition operations, if you choose to ignore this warning.

Once again, we request your co-operation in the matter of evacuation to save any further unpleasantness."

The plaintiffs commenced this action on 20th January, 1965 and on the following day obtained a court order for an interlocutory injunction. The basis of the plaintiffs' claim is that they rented the front portion of the premises from the second defendants who are the chief tenants of the premises of which the first defendants are the landlords, that the premises are subject to the Control of Rent Ordinance, 1956, and that consequently in the absence of an order or judgment for recovery of possession of the premises, the defendants, their servants or agents are not entitled to lock the gates leading to the premises or to require the plaintiffs to vacate from the said premises or to demolish the premises.

The first defendants deny that the premises are subject to the Control of Rent Ordinance, 1956. They further deny that the plaintiffs are sub-tenants of the second defendants as they granted only a licence to the second defendants to occupy the premises for a monthly fee of $3,000, and they contend that the said licence was duly determined on the 30th day of September, 1964 but that the second defendants have not been able to give up possession of the premises by reason of the plaintiffs' failure or refusal to vacate the portion of the premises occupied by them.

The second defendants deny that the premises are subject to the Control of Rent Ordinance, 1956, or that they are the chief tenants of the premises, their contention being that at all material times they held a licence from the first defendants to use the premises. They further state that such licence had been duly determined by the first defendants, and that to enable them to surrender the premises to the first defendants, they gave due notice to the plaintiffs to vacate the portion of the premises occupied by them, which notice the plaintiffs have failed to comply with.

At the hearing of the action it was not seriously argued on behalf of the plaintiffs that

the premises are subject to the Control of Rent Ordinance, 1956, or that the agreement under which they were allowed to make use of the premises on payment of rent was a proper tenancy agreement. In fact, counsel for the plaintiffs conceded that the agreement between the first defendants and the second defendants was a licence and that the relationship between the second defendants and the plaintiffs was that of licensor and licensee. The ground on which the plaintiffs seek a perpetual injunction is that the notice given to them by the second defendants was not in terms of the agreement under which they were in occupation of the premises and that therefore their occupation has not been duly determined. The evidence on behalf of the plaintiffs at the trial does not take the matter any further. Their managing director, Mr. Low Yeak Lock, has given evidence to say that after receipt of the notice his company made attempts to find an alternative site. They were recommended a piece of land in Circular Road by Mr. Stephenson of the second defendant company, but on inspection they found it to be unsuitable for their purpose. They tried other places and in fact found one place, but the rent demanded was high. According to them, the rent for the present premises was much cheaper than at other places. This, of course, is a possible explanation as to why the premises were let under a mere licence and not under a proper tenancy agreement.

The first defendants have produced evidence to show that the premises were built in 1950. This evidence was not challenged at all by the plaintiffs. Consequently I have no difficulty in making a finding of fact that the premises are not subject to the Control of Rent Ordinance, 1956. As I have already indicated, the first defendants' contention that the premises were let under a licence has not been seriously challenged. The first defendants further contend that their termination of the second defendants' licence operated as a termination of the licence held by the plaintiffs. This contention was made on the authority of the following paragraph at page 974 of *Woodfall* on Landlord and Tenant, 26th Edition:—

> "A landlord's notice to quit will destroy along with the head tenancy all sub-tenancies derived thereout, but a lessee's notice to quit to his landlord will not impair or destroy the interest previously granted to a sub-tenant, on the principle that no voluntary act on his part terminating his own interest will put an end to the tenancy which he has created in the sub-tenant."

On the basis of that authority, the argument put forward here was that, if the head licence is properly determined by the head licensor, the sub-licensee has no right to remain in occupation as against the head licensor. Reference was also made in this connection to the case of *Sherwood (Baron)* v. *Moody and Others.*[1]

The evidence produced on behalf of the second defendants really does not take us any further than what is to be gathered from the documents to which I have referred in the earlier part of my judgment. Mr. Stephenson, the branch manager of the second defendants at Kuala Lumpur, has stated that the plaintiff firm did make an indication to him that they were going to vacate. He attempted to find the plaintiffs an alternate site in Circular Road, Kuala Lumpur, but the plaintiffs found it unacceptable because it was too expensive and not suitable. He has further stated that between the date of their first letter to the plaintiff firm dated the 10th September, 1964 and the letter dated 22nd March, 1965, he received the rents paid by the plaintiffs because they were in physical occupation, although to his knowledge rent for December 1964 was not paid. Under cross-examination he admitted that he gave instructions to his employees to lock the gate on 6th January, 1965 and on another occasion.

The first question which I have to decide is whether the agreements between the parties dated 1st February, 1963 and 15th June, 1963 respectively created the relationship of landlord and tenant or merely that of licensor and licensee. In this connection it is stated in *Halsbury's* Laws of England, 3rd Edition, Volume 23, Paragraph 1022 at page 427 as follows:—

> "In determining whether an agreement creates between the parties the relationship of landlord and tenant or merely that of licensor and licensee the decisive consideration is the intention of the parties. The parties to an agreement cannot, however, turn a lease into a licence merely by stating that the document is to be deemed a licence or describing it as such; the relationship of the parties is determined by law on a consideration of all relevant provisions of the agreement; nor will the employment of words appropriate to a lease prevent the agreement from conferring a licence only if from the whole document it appears that it was intended merely to confer a licence. In the absence of any formal document the intention of the parties must be inferred from the circumstances and the conduct of the parties."

Paragraph 1025 at page 429 of the same volume states as follows:—

> "A licence is normally created where a person is granted the right to use premises without becoming entitled to exclusive possession thereof, or the circumstances and conduct of the parties show that all that was intended was that the grantee should be granted a personal privilege with no interest in the land. If the agreement is merely for the use of the property in a certain way and on certain terms while the property remains in the possession and control of the owner, the agreement will operate as a licence, even though the agreement may employ words appropriate to a lease."

In *Addiscombe Garden Estates Ltd. and Anor.* v. *Crabbe and Others* [2] Jenkins L.J. after reviewing a number of earlier authorities, stated that "the law remains that the fact of exclusive possession, if not decisive against the view that there is a mere licence, as distinct from a

tenancy, is at all events a consideration of the first importance." In the present case it was provided in paragraph 2 of the agreement dated the 1st of February, 1963, between the first and the second defendants that "the company shall at all times retain possession of the said premises and the watchman at present employed by the company shall live and asleep in the said premises and shall occupy the same in so far as his occupation shall be necessary to enable him to carry out his duties and to sleep on the said premises." This provision in the agreement affords the clearest indication that exclusive possession by the second defendants was not intended. I am therefore of the opinion that this agreement created the relationship of licensor and licensee as between the first defendants and the second defendants. I am fortified in this view by the indication that at the time of this agreement the first defendants contemplated sale of their Campbell Road property. This indication is to be gathered from the first defendants' letter dated 9th September, 1964, in which they stated that the sale of their Campbell Road property had reached a position where they required the second defendants to vacate the premises as soon as possible. It follows from what I have said that the second defendants as mere licensees had no power to grant a subtenancy to the plaintiffs. Consequently, the relationship between the second defendants and the plaintiffs was that of sub-licensor and sub-licensee.

The notice by the first defendants by their letter dated 9th September, 1964, required the second defendants to vacate the premises by 30th September, 1964. This was obviously not a month's notice as required under paragraph 12 of the licence agreement, but the second defendants replied to that letter on the same day to say that they had noted that possession of the premises was required on 30.9.1964 and that they would comply with the first defendants' request. The second defendants had thus acquiesced in receiving a notice for a shorter term than they were entitled to. This notice therefore had the effect of putting an end to their contractual licence by 30th September, 1964, although in the events which took place they were not in a position to give up possession of the entire premises because of the refusal by the plaintiffs to vacate.

The notice by the second defendants to the plaintiffs was dated the 10th of September, 1964, but it was not delivered to the plaintiffs until 14th September, 1964. As this notice required the plaintiffs to vacate not later than 12th October, 1964, it was not a month's notice as required under the provisions of paragraphs 2 and 5 of the agreement dated 15th June, 1963 between the parties. The licence between the parties here being a contractual licence, its revocation contrary to the provisions of the contract was a breach of the contract.

The only other question for me to decide is the remedy or remedies to which the plaintiffs are entitled by reason of the revocation of their licence in breach of the contract under which they obtained the licence.

The general rule is that if the revocation of the licence is a breach of contract, the licensee can recover damages for the breach. In this connection *Hill and Redman's* Law of Landlord and Tenant, 13th Edition, at page 16 says as follows:—

> "If by his own act, as by an assignment of the subject-matter of the licence, or the act of some superior authority which could not be presumed not to have been within the contemplation of the contracting parties, it becomes impossible for the grantor of the licence to give facilities for its exercise, and the licence was given for valuable consideration, the grantor will be liable in damages for breach of contract to the licensee."

As I have stated earlier, this is a claim essentially for an injunction. The crucial part of this question therefore is whether they are entitled to an injunction in all the circumstances of the case.

The general rule is that it is not in every case of breach of contract or covenant that the court will interfere by way of injunction. The mere fact that the contract or covenant in question is clear, and the breach clear, is not of itself sufficient to warrant the interference of the court, unless the contract or covenant is itself of such a nature that it can be enforced consistently with the rules and principles upon which the court acts in granting equitable relief (see *Halsbury's* Laws of England, 3rd Edition, page 380, paragraph 798).

Thus, the court may grant an injunction in the case of a breach or threatened breach of a contract of which it will order specific performance so as to maintain a *status quo* between the parties pending the court's decision as to whether the contract should be specifically performed. In my opinion no court would grant an injunction in the case of a contract for the creation of a licence which is not coupled with an interest in land even if the licence is for valuable consideration.

The case of *Wilson* v. *Tavener* [3] is some authority for the proposition that the court will not grant an injunction in relation to a contractual licence. The position would be different in the case of a contractual tenancy which is protected by statute. In the present case, as I have already stated, there was no contractual tenancy and the premises are not governed by the Control of Rent Ordinance, 1956. I have therefore come to the conclusion that the plaintiffs are not entitled to an injunction.

As regards damages, no evidence has been led as to what damages the plaintiffs have suffered. They have remained and are still in occupation of the premises. The gates to the premises were locked only for a short time and this took place long after they had knowledge that the owner of the premises had terminated the licence of the first defendants. In the circumstances I am not prepared to grant them any damages. In the result this action is dismissed.

Both defendants have also asked for damages in their counter-claims, but they too have led no evidence as to what damages they have suffered. As far as I am aware, the second defendants are still in occupation of the premises and are presumably paying rent to the first defendants. The second defendants have received rent from the plaintiffs up to a certain period. They are clearly entitled to rent for the period during which the rents have remained unpaid. That will be the measure of damages in the case of the second defendants.

Both defendants on their counter-claims have asked for an order that the plaintiffs do vacate the premises. As the second defendants are not altogether blameless, I do not propose to make this order on their counterclaim. The first defendants, however, are entitled to this order and I accordingly make an order that the plaintiffs do vacate the premises on or before 31st August, 1965. I also make an order that the plaintiffs do pay the second defendants by way of damages the amount of rent due up to 31st August, 1965. The plaintiffs will pay the full costs of the first defendants and the costs of the second defendants on the claim in consequence of the dismissal of the action.

Order accordingly.

Solicitors: *Mah King Hock; Allen & Gledhill; Braddell & Ramani.*

RAJA ZAM ZAM v. VAITHIYANATHAN

[O.C.J. (Raja Azlan Shah J.) July 26, 1965]

[K.L. — Civil Suit No. 702 of 1964]

Negligence — Damages — Quantum — Special and general damages — Prospective pecuniary loss.

Damages — Fracture of coccyx — Housewife — Partial disability.

The plaintiff sustained injuries in a motor car accident and claimed $30,000 for general damages. The plaintiff was a housewife with seven children. As a result of the accident she was unable to continue to do housework and had to engage servants to help her in the household duties.

Held: (1) the practice is not to specify the amount of general damages in the pleadings;

(2) in assessing general damages in such cases there are three elements to be considered (a) pain and suffering, (b) loss of enjoyments of life, and (c) prospective pecuniary loss;

(3) in the circumstances of this case the plaintiff would be awarded $18,500 as general damages.

[**Editorial Note:** See also *Tham Kwa Chin* v. *Choong Hoong Sun*, [1954] M.L.J. 161, where Spenser Wilkinson J. pointed out that it is not in accordance with the best traditions of pleading to claim any specified sum when claiming general damages and that the proper prayer is "The plaintiff claims damages".]

Cases referred to:—

(1) *British Transport Commission* v. *Gourley* [1956] A.C. 185 at p. 206.

(2) *Roach* v. *Yates* [1937] 3 All E.R. 442 at p. 444.

(3) *Shearman* v. *Folland* [1950] 1 All E.R. 976.

(4) *Brockbank* v. *Whitehaven Junction Railway Company* 158 E.R. 706.

CIVIL SUIT.

Hee Keng Loon for the plaintiff.

Tara Singh Sidhu for the defendant.

Cur. Adv. Vult.

Raja Azlan Shah J.: On 19th October,1962 while the plaintiff was walking on her correct side of the road she was knocked down by the defendant who was then driving his motor-car. Liability is admitted, and therefore the sole issue before the court is the quantum of damages. She claims general damages for injuries sustained in the sum of $30,000. Special damages were not claimed.

This is a peculiar way of claiming general damages. It is not the present practice to specify the amount of general damages in the pleadings. As was said by Lord Goddard in *British Transport Commission* v. *Gourley*: (1)

"In an action for personal injuries, the damages are always divided into two main parts. First, there is what is referred to as special damage which has to be specially pleaded and proved. ....Secondly, there is general damage which the law implies and which is not specially pleaded".

At the time of the accident the plaintiff was and still is a married woman, aged 31 years. The husband works in the Pejabat Telecom at a salary of $620 per month. She has seven children. She used to do household work which consisted of cooking, taking care of the house and family, washing and sewing. In fact she was doing what a normal, happy and healthy housewife would have done. She used to attend parties, visit the cinemas, entertain guests, and visit her mother at Klang. After the accident she no longer does household work because she says she cannot now sit for a long time and whenever she does household work she feels sick. She still complains of pain in the buttock and attacks of headache. She now employs a servant to do the cooking and washing at $50 per month and another servant to do the ironing at $8 per month.